

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

IN RE: Bair Hugger Forced Air Warming  
Products Liability Litigation

MDL No. 15-2666 (JNE/FLN)

This Document Relates to All Actions.

**PLAINTIFF(S)**

\_\_\_\_\_

**VS.**

**3M COMPANY AND ARIZANT  
HEALTHCARE, INC.**

**[proposed] AMENDED EXHIBIT B TO  
PRETRIAL ORDER #8 –  
SECOND AMENDED MASTER SHORT  
FORM COMPLAINT AND JURY  
TRIAL DEMAND**

1. Plaintiff, \_\_\_\_\_, states and brings this civil action in MDL No. 15-2666, entitled *In Re: Bair Hugger Forced Air Warming Products Liability Litigation*. Plaintiff(s) [is/are] filing this Short Form Complaint as permitted by Pretrial Order #8 of this Court.

**PARTIES, JURISDICTION AND VENUE**

2. Plaintiff, \_\_\_\_\_, is a resident and citizen of the State of \_\_\_\_\_ and claims damages as set forth below.

3. Plaintiff's Spouse, \_\_\_\_\_, is a resident and citizen of the State of \_\_\_\_\_, and claims damages as set forth below. *[Cross out Spousal Claim if not applicable.]*

4. Jurisdiction is proper based upon diversity of Citizenship.

5. Proper Venue: The District Court in which remand trial is proper and where

this Complaint would have been filed absent the direct filing order by this Court is \_\_\_\_\_.

6. Plaintiff brings this action [*check the applicable designation*]:

\_\_\_\_\_ On behalf of [himself/herself];

\_\_\_\_\_ In a representative capacity as the \_\_\_\_\_ of the \_\_\_\_\_ having been duly appointed as the \_\_\_\_\_ by the \_\_\_\_\_ Court of \_\_\_\_\_.

A copy of the Letters of Administration for a wrongful death claim is annexed hereto if such letters are required for the commencement of such a claim by the Probate, Surrogate or other appropriate court of the jurisdiction of the decedent.

[*Cross out if not applicable.*]

### **FACTUAL ALLEGATIONS**

7. On or about \_\_\_\_\_, Plaintiff underwent surgery during which the Bair Hugger Forced Air Warming system (hereinafter “Bair Hugger”) was used during the course and scope of [his/her] \_\_\_\_\_[type of surgery] at the \_\_\_\_\_ [medical center and address], in \_\_\_\_\_ [city and state], by Dr. \_\_\_\_\_.

8. Contaminants introduced into Plaintiff’s open surgical wound as a direct and proximate result of use of the Bair Hugger during the subject surgery resulted in Plaintiff developing a periprosthetic joint infection (“PJI”), also known as a deep joint infection (“DJI”). The pathogen identified was \_\_\_\_\_ (*if known*).

9. As a result of Plaintiff’s infection caused by the Bair Hugger, Plaintiff has

undergone \_\_\_\_\_[Describe treatment(s) received, e.g.,  
revision arthroplasty, wound vac treatment, multiple staged procedures, etc.] on or about  
\_\_\_\_\_, at \_\_\_\_\_ [medical center(s) and  
address(es)] by Dr(s). \_\_\_\_\_. [*Cross out if not applicable.*]

### **ALLEGATIONS AS TO INJURIES**

10. (a) Plaintiff claims damages as a result of (check all that are applicable):

- \_\_\_\_\_ INJURY TO HERSELF/HIMSELF
- \_\_\_\_\_ INJURY TO THE PERSON REPRESENTED
- \_\_\_\_\_ WRONGFUL DEATH
- \_\_\_\_\_ SURVIVORSHIP ACTION
- \_\_\_\_\_ ECONOMIC LOSS

(b) Plaintiff's spouse claims damages as a result of (check all that are  
applicable): [*Cross out if not applicable.*]

- \_\_\_\_\_ LOSS OF SERVICES
- \_\_\_\_\_ LOSS OF CONSORTIUM

11. Defendants, by their actions or inactions, proximately caused the injuries to  
Plaintiff(s).

### **DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY**

12. The following claims and allegations are asserted by Plaintiff(s) and are herein  
adopted by reference (check all that are applicable):

- \_\_\_\_\_ FIRST CAUSE OF ACTION - NEGLIGENCE;
- \_\_\_\_\_ SECOND CAUSE OF ACTION - STRICT LIABILITY;
- \_\_\_\_\_ FAILURE TO WARN

\_\_\_\_\_ DEFECTIVE DESIGN AND MANUFACTURE

\_\_\_\_\_ THIRD CAUSE OF ACTION – BREACH OF EXPRESS WARRANTY;

\_\_\_\_\_ FOURTH CAUSE OF ACTION- BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY LAW OF THE STATE OF \_\_\_\_\_, §§ \_\_\_\_\_;

\_\_\_\_\_ FIFTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD ACT;

\_\_\_\_\_ SIXTH CAUSE OF ACTION – VIOLATION OF THE MINNESOTA DECEPTIVE TRADE PRACTICES ACT;

\_\_\_\_\_ SEVENTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA UNLAWFUL TRADE PRACTICES ACT;

\_\_\_\_\_ EIGHTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA FALSE ADVERTISING ACT;

\_\_\_\_\_ NINTH CAUSE OF ACTION- CONSUMER FRAUD AND/OR UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER LAW OF THE STATE OF \_\_\_\_\_, §§ \_\_\_\_\_ ;

\_\_\_\_\_ TENTH CAUSE OF ACTION – NEGLIGENT MISREPRESENTATION;

\_\_\_\_\_ ELEVENTH CAUSE OF ACTION- FRAUDULENT MISREPRESENTATION;

\_\_\_\_\_ TWELFTH CAUSE OF ACTION – FRAUDULENT CONCEALMENT;

\_\_\_\_\_ THIRTEENTH CAUSE OF ACTION – LOSS OF CONSORTIUM; and

\_\_\_\_\_ FOURTEENTH CAUSE OF ACTION – UNJUST ENRICHMENT.

\_\_\_\_\_ FIFTEENTH CAUSE OF ACTION – PUNITIVE DAMAGES

In addition to the above, Plaintiff(s) assert the following additional causes of action

under applicable state law:

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*[Cross out if not applicable.]*

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff(s) pray for judgment against Defendants as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;
4. Punitive Damages;
5. Costs and expenses of this litigation;
6. Reasonable attorneys' fees and costs as provided by law;
7. Equitable relief in the nature of disgorgement;
8. Restitution of remedy Defendants' unjust enrichment; and
9. All other relief as the Court deems necessary, just and proper.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff(s) hereby demand(s) a trial by jury as to all claims in Complaint so triable.

Dated:\_\_\_\_\_

Respectfully submitted,

[INSERT COUNSEL SIGNATURE BLOCK]

